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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042.

Investigation 15-11-007
(Filed November 5, 2015)

ADMINISTRATIVE LAW JUDGE'S RULING ADDRESSING DATA ISSUES

I continue to be concerned with what I have previously characterized as "information asymmetry."¹ This manifests itself in many ways, but the common denominator is an unequal distribution of information among the parties. This Ruling is designed to partially address that problem. It addresses testimony and responses to the Information Requests in the above-captioned Order Instituting Investigation (OII), information from competing carriers, and information requested by The Utility Reform Network (TURN).

1. Testimony

The following Respondents and other parties served final testimony and responses to the OII Information Requests on June 1, 2016: Comcast Phone of California LLC; Cox California Telecom LLC; Charter FiberLink CA-CCO, Time Warner Cable Information Services, AT&T and AT&T Wireless (Pacific Bell Telephone Company and New Cingular Wireless PCS, LLC, respectively); Verizon Wireless (Cellco Partnership et al.) and Verizon Business Services (MCI

¹ March 4, 2016 Ruling Adopting Protective Order, at 9; April 1, 2016 Ruling on Remaining Protective Order Issues, at 9.

Communications Services); several Frontier California affiliates; T-Mobile West LLC; Sprint Telephony PCS, L.P.; The Utility Reform Network (TURN); Office of Ratepayer Advocates (ORA); the Greenlining Institute; Writers Guild of America West (WGAW); and the Center for Accessible Technology (CforAT).

Additionally, CTIA filed a response to Greenlining's earlier testimony, which response I will treat as testimony although it was not styled as such.

It is my intention to enter all of this testimony into the record, although time will be allocated in the Scoping Memo for the filing of motions to strike or other objections to the testimony to be filed.

I again direct the parties to post their testimony on the Commission's FTP server, giving access to the public, Confidential, Highly Confidential, and "Commission Only"² versions of their testimony on their respective Accellion workspaces.³

2. Open OII Data Issues

I am informed by staff that some of the Respondent carriers have not yet completed the production of information requested in the OII, with regard to subscription data and wholesale inputs, *inter alia*. Staff's review continues. I will

² As used herein, "Commission Only" refers only to testimony that contains the granular subscription data, the release of which beyond the four walls of the Commission is preliminarily enjoined by Order of the Hon. Vince Chhabria. *See* May 20, 2016 Order Granting Motion for Preliminary Injunction, entered in *New Cingular v. Picker et al*, 16-cv-02461-VC (N.D. Cal.).

³ *See, e.g.*, April 1, 2016 Ruling, at 26 and Appendix A. As the parties control their own workspaces, they (and not staff) control what set of parties or persons get access to the documents. Access is to be provided in accordance with the March 4 and April 1 Rulings addressing Protective Order issues, with the exception of the granular subscription data noted above.

remind Respondents of their continuing duty to comply fully with the OII Information Requests, and to post that information on the Commission's FTP server, with access limited in accord with the Commission's Protective Order and the May 20, 2016 District Court Order.

3. Competitive Carrier Data

My April 18, 2016 Ruling on Access to Competitive Carrier Data, directed toward non-party competitive carriers that had received and responded to staff data requests related to this Investigation, announced my "intent to make the data submitted by them available to parties in this proceeding who have filed the appropriate Acknowledgment and committed to keep that material confidential or 'highly confidential' pursuant to the terms of the Protective Order issued on March 4, 2016." That Ruling gave "the competitive carriers listed in Appendix A hereto, and any Party hereto, ... until close of business on April 25, 2016, to file and serve on the service list of this proceeding, any comments on or objections to the release of competitive carrier information subject to the Protective Order and Rulings referenced above." No such objections or comments were filed,⁴ and accordingly I am directing staff to make this material available to the parties through the Commission's Accellion FTP webserver, with access to Confidential and Highly Confidential information limited to those parties who have signed the appropriate Protective Order Acknowledgment. In accordance with the District Court Order of May 20, 2016, no granular "477" subscription data shall

⁴ Objections were filed as to another matter, however, using the "special appearance" procedural vehicle set forth in the April 18 Ruling. See by MetTel and Utility Telecommunications to AT&T's provision of data to TURN. I have ruled on the Utility Telecommunications objection, and intend to rule shortly on the MetTel objection.

be made available to anyone outside of the Commission until further ruling of the Court.⁵

It is also my intention to move these data responses into the record, subject to the same opportunity for objections as provided with regard to the parties' testimony (above).

I will also note that the competitive carriers, although not parties to this proceeding, have a duty under Public Utilities Code §§ 311, 314, 581-582 and 584 to respond fully to staff's information requests.

4. TURN Data Requests

TURN's Motion to Compel has not been completely resolved. I again direct TURN and involved carriers to submit a Joint Statement (*see* California Rule of Court 3.1345(c)), informing me what matters, if any, are still at issue, and what arguments obtain for and against the production of the outstanding data. When that matter is resolved, I direct TURN (or the Respondent carriers) to post on the FTP website all data received in response to its data requests, again with access limited to those who have signed the Protective Order Acknowledgment.

5. MetTel's Objection to Production by AT&T to TURN of State-Wide Wholesale Information.

I am in receipt of the Request of Metropolitan Telecommunications of California, Inc., dba MetTel (U-6568) for Leave to Make Special Appearance to Object to Disclosure of Highly Confidential Information by Pacific Bell Telephone Company dba AT&T California (U-1001-C) to TURN. By an e-mail ruling, I granted MetTel's request to make a special appearance for the purpose

⁵ Order of the Hon. Vince Chhabria Granting Motion for Preliminary Injunction, entered in *New Cingular v. Picker et al*, 16-cv-02461-VC, on May 20, 2016.

of lodging this objection. Because the Objection apparently relates to TURN's Motion to Compel (above), I am providing a preliminary ruling on the Objection.

Based on the AT&T Accessible Letter attached to MetTel's Objection, the Objection goes to the TURN data requests inquiring into wholesale inputs, presumably the following:

- 23) Identify each unaffiliated service provider to which your company sold wholesale service lines for 2015, or the most recent 12-month period where data is available. Please provide this information in an Excel file.
- 24) For 2015, or the most recent 12-month period where data is available, please identify the number of residential wholesale service lines sold to unaffiliated third parties by Census Tract. Please provide this information in an Excel file.
- 25) For 2015, or the most recent 12-month period where data is available, please identify the number of residential wholesale service lines sold to each unaffiliated third party by Census Tract. That is, please list the service provider name, number of residential wholesale service lines sold, and Census Tract. Please provide this information in an Excel file.
- 26) For 2015, or the most recent 12-month period where data is available, please identify the number of business wholesale service lines sold to unaffiliated third parties by Census Tract. Please provide this information in an Excel file.
- 27) For 2015, or the most recent 12-month period where data is available, please identify the number of business wholesale service lines sold to each unaffiliated third parties by Census Tract. That is, please list the service provider name, number of business wholesale service lines sold, and Census Tract. Please provide this information in an Excel file.

- 28) Identify each unaffiliated third party service provider to which your company sold local loop UNEs for 2015, or the most recent 12-month period where data is available. Please provide this information in an Excel file.

MetTel's objections are two: that the requested data is 477 data, and is therefore barred by the Court's May 20, 2016 Order, referenced above; and that the requested data is Consumer Proprietary Network Information (CPNI) belonging to MetTel. I have already addressed and overruled the latter objection in my June 1, 2016 Ruling on a similar objection by Utility Telecom Group, the logic of which I incorporate herein.

As to whether the requested data is 477 data covered by the Court's Ruling, MetTel is somewhat evasive. Judge Chhabria's Order was directed to a very specific type of 477 data, granular census block/tract subscription data. There are other types of 477 data which the FCC itself has made public (*e.g.*, deployment data, even at the census block level). So, even if some of the requested data were actually found on AT&T's 477 reports (MetTel's statements are inconclusive), this does not automatically translate to a finding of confidentiality.

I will accept that Judge Chhabria's Order could apply to TURN's two requests (25 and 27) which specify "lines sold to each unaffiliated third party by Census Tract." The remaining data requests ask only for either aggregate wholesale services sold in each census tract, or aggregate statewide numbers by provider. As to statewide numbers, I have already rejected the objection that this should be "Commission Only" information. *See* April 1, 2016 Ruling at 10-11.

As to Data Requests 25 and 27, I suggest the parties negotiate an arrangement that provides wholesale information on a census tract basis, but in a way that the individual carrier names are anonymized.⁶

The wholesale information relating to third-party carriers shall either be treated as Confidential or Highly Confidential Information, as set forth in my April 1, 2016 Ruling, at 19-22.

IT IS SO RULED.

Dated June 9, 2016, at San Francisco, California.

/s/ KARL J. BEMESDERFER

Karl J. Bemederfer
Administrative Law Judge

⁶ In an e-mail exchange, MetTel's counsel said:

MetTel would not object to disclosure of its data with its name and identifying information removed if all competitive carrier information is produced by AT&T in the aggregate and reported in such manner. However, MetTel would still object if only MetTel's or a limited number of carriers' data is disclosed in this manner, such that it could be reasonably inferred from the disclosure which data belongs to MetTel.